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Docket No.: 1538.1012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Takao SAMUKAWA et al.

Serial No. 09/803,153

Group Art Unit: 3628

Confirmation No. 3267

Filed: March 12, 2001

Examiner: Elda G. Milef

For: SYSTEM AND METHOD FOR SUPPORTING ODD LOT TRADING

REQUEST TO WITHDRAW FINALITY OF THE OUTSTANDING OFFICE ACTION

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Attention: **BOX AF**

Sir:

This is responsive to the Final Office Action mailed February 13, 2006, and having a period for response set to expire on May 13, 2006. As May 13, 2006 fell on a Saturday, this is timely filed on Monday, May 15, 2006.

At page 15 of the outstanding Final Office Action, at numbered item 4, the Office Action states "Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection." At page 15, numbered item 6, the Office Action states "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a)."

MPEP §706.07(a) states that a "... second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement..."

In the Amendment filed 25 November 2005, Applicants made no substantive amendments to the claims. Additionally, no Information Disclosure Statement was filed subsequent to the Amendment filed 25 November 2005 and prior to the issuance of the outstanding Office Action. Rather, the claim amendments presented in the 25 November 2005 Amendment merely improved the form of the claims. Applicants respectfully traversed the rejection of claims 1-24 and presented arguments distinguishing the pending claims over the cited art.

Applicants note that, since the Examiner previously conducted a search, considered, and rejected claims 1-24, the Examiner's "new" grounds of rejection, which again rejects the claims under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,604,044 to Wallman in view of "How the Stock Market Works" by Dalton, **cannot** be necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.

Further, MPEP §707.07(f) states "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." Further, the Examiner Note to form paragraph 7.38 (Arguments Are Moot Because of New Ground(s) of Rejection) states "The examiner **must**, however, address any arguments presented by the applicant which are still relevant to any references being applied."

In the outstanding Final Office Action, the rejections of independent claims 1, 9, and 17, from which dependent claims 2-6, 10-14, and 18-22 directly or indirectly depend, and independent claims 7, 15, and 23, from which claims 8, 16, and 24 directly depend, were repeated **verbatim** from the Office Action mailed August 26, 2005. Thus, contrary to the Office Action's assertion, the arguments presented in the Amendment filed November 28, 2005 are relevant to the references applied in the outstanding Office Action. These arguments, however have not been addressed in the outstanding Final Office Action. As the MPEP requires that the Final Office Action address these arguments, Applicants respectfully submit that the outstanding Final Office Action is deficient.

Accordingly, Applicants respectfully request withdrawal of the Finality of the outstanding Office Action.

If any fees are required in connection with the filing of this Petition, please charge same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date:

15 May 2006

By:

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